

FOREWORD

Newly-appointed county election board members often ask how Indiana law defines the board members' duties. This is a difficult question to answer. Although Indiana law does not set forth the specific duties of county election board members, these individuals play a very important role in the county election process.

However, each county election board member really defines their own role as they perform their duties. The personalities of the elected circuit court clerk and other county election board members are a significant part of the process. In addition, county tradition will often determine just how much or how little involvement the members of the county election board will have in the entire election process.

For instance, in some counties, the members of the county election board have expressed little interest in the day-to-day duties involved in conducting an election. Sometimes county election board members are retired or semi-retired and spend much of their time out of state, returning only for a brief period of time prior to an election. Some appointed county election board members have not and do not wish to act on most election issues and may not want to have meetings more than a few times a year and only when necessary.

In other cases, the county election board members are very involved in every process of the election and are frequently called upon to make decisions regarding a variety of topics from candidacy issues to polling location designations.

The amount of time and level of activity each county election board member devotes to election duties is determined by the personalities and willingness of the individuals on the board.

Some election tasks **require** the participation of the members of the county election board. These duties are set forth in the Indiana Code.

COUNTY ELECTION BOARDS: THE STATUTORY AUTHORITY

Each Indiana county, with the exception of Lake County, has a **county election board**. The county election board is composed of three members. In Lake County, a board of elections and registration consisting of five members has replaced the former county election board and former board of voter registration. IC 3-6-5.2 governs the Lake County board.

In all other counties in Indiana, the circuit court clerk is automatically a member and is the secretary of the county election board by virtue of serving as clerk. The clerk appoints the two other members of the county election board as well.

The two appointed members of the county election board represent each of the two major political parties in the county. **The county chair of each major political party nominates, in writing, an individual to serve on the county election board.** The circuit court clerk ***is required*** to appoint whomever the county chair officially nominates (IC 3-6-5-5). A person appointed to serve on a county election board serves until the person's successor is appointed and qualified, but may be removed by their appointing county chair at any time (IC 3-6-5-6). The members of the county election board must choose one (1) of the appointed members to serve as chair of the board. The circuit court clerk always serves as secretary of the board (IC 3-6-5-8).

If a vacancy occurs on a county election board for a reason ***other than removal by a county chair***, the circuit court clerk ***MUST*** notify the county chair within five (5) days of the vacancy. The county chair then has five (5) days in which to nominate a successor (IC 3-6-5-7).

Again, the circuit court clerk ***MUST*** appoint whomever the county chair nominates.

If the county chair fails to make the nomination before the deadline, the circuit court clerk may proceed to select a person of the clerk's own choosing to serve on the county election board. The person the clerk selects ***MUST*** be of the same political party as the board member who vacated the office. The circuit court clerk has an additional five (5) days to make an appointment to the county election board if the county chair fails to nominate a successor to fill a vacancy (IC 3-6-5-7).

Before an appointed member (or proxy), begins serving as a duly appointed county election board member, that individual ***must*** take an appointment and oath of office (*CEB-6 form*), which will be filed with the circuit court clerk of the county (IC 5-4-1-4).

A copy of this appointment and oath is included at the end of this manual.

A county election board member may appoint a proxy to serve in the member's place on the county election board, if necessary. Especially as an election draws near, situations may arise that might require the county election board to meet on short notice. If a county election board member is unable to attend a meeting, the absent member may appoint both a proxy of record and an alternate proxy. The member must file a written affidavit with the circuit court clerk naming the proxy. The county election board proxy has the same authority to act and vote on all matters as does the county election board member that was originally appointed. A proxy or an alternate proxy ***may not*** hold an elected office, nor be a candidate for elected office. The original county election board member may revoke the authority of the proxy at any time. The proxy's authority may be either general or limited with regard to duration or subject matter. In the appointing affidavit, the member appointing the proxy must define the authority of that proxy.

Each member of the county election board is entitled to receive compensation for serving on the board. The amount of the compensation is established by the county fiscal body, which is the county council, (or in Marion County, the city-county council). Since state statute does not prescribe a specific amount of compensation for the county election board members, the county council may pay county election board members whatever amount it determines to be appropriate in the county. Indiana Code 3-6-5-9 states:

Compensation of members. - Each county fiscal body shall determine, in the manner provided by law, the compensation of:

- (1) The appointed members of the county election board; and
- (2) The clerk for the clerk's services as secretary of the county election board.

There is a wide disparity in how county fiscal bodies compensate the members of the county election board. Most counties compensate the members with an annual salary that may be less in non-election years. The amount of the annual salary has ranged in amounts from \$125 a year for some counties to \$5,236 for other counties during election years. At least one county pays the county election board members at an hourly rate, which is not necessarily tied to the minimum wage!

The amount of the compensation paid to the county election board members may have no relation to the amount of work or time that the members expend in fulfilling

their statutory duties.

COUNTY ELECTION BOARD OFFICES AND EMPLOYEES

In order for the county election board to conduct its official business, it is important that there be sufficient working space available in the county. The county commissioners of each county must provide the county election board with office space in, or conveniently located near, the county courthouse (IC 3-6-5-10).

The chair of the county election board must call meetings whenever the chair considers it necessary for the performance of the county election board's duties. If the chair fails to call meetings, then the other two members may meet and perform the powers and duties of the county election board (IC 3-6-5-12).

Unless specifically authorized under the Indiana Open Door Law, all meetings of the county election board are open to the public to observe, although the board is not required to provide the opportunity for public comment at every meeting. In most cases, forty-eight (48) hours' notice must be given (not including Saturdays, Sundays and other legal holidays), by **posting a written notice of the meeting at the principal office of the county election board. The county election board is not required to publish a legal notice of the meeting in a newspaper unless the board wishes to do so.**

As secretary, the circuit court clerk must maintain minutes of all meetings, including the "yes" and "no" votes of each member of the board on all questions in which a vote is taken (IC 3-6-5-13). These meeting minutes should also indicate which members are present and, if the board provides a sign-in sheet, which members of the public were present or gave comments or testimony before the board, if permitted to do so. Particularly in meetings on controversial matters which could lead to future legal actions, it may be useful to tape record the board's meetings and proceedings, by using a tape recorder or video camera.

In addition, the county election board may hire deputy election commissioners, clerks, custodians and other employees if necessary for the execution of its powers. The county election board may determine the duties, rank and salaries of its employees. Any deputy election commissioners appointed under Indiana law must be

divided equally between the major political parties as designated by the deputy commissioners' respective county political chair (IC 3-6-5-21). Deputy election commissioners may assist the county election board members in carrying out the duties of the board in accordance with state law and regulations established by the board.

A candidate for elected office **may not** serve as an employee of a county election board. If a deputy election commissioner or other employee of the county election board becomes a candidate for elected office, the person must immediately resign from the position (IC 3-6-5-24).

The question often arises in election years as to the circuit court clerk's responsibilities with regard to election duties, especially if the clerk is a candidate for re-election. The Indiana Code specifically provides that the clerk serves as the secretary to the board, regardless of whether or not it is an election year. In fact, IC 3-6-5-19 specifies that, with the approval of the county election board, the clerk shall exercise the powers and perform the duties imposed upon the county election board whenever the facilities of the clerk's office make it more reasonable and efficient for the clerk to do so. However, the extent to which each individual clerk feels comfortable handling most daily election duties when the clerk is on the election ballot without the assistance or oversight of the county election board, is a decision that the clerk and county election board members must make in each situation.

In most cases, the fact that there are two other members of the county election board, each representing one of the two major political parties of the state, ensures that there will always be an adequate amount of "checks and balances" built into the system. However, the county election board can adopt a resolution by unanimous vote of the board, to provide that certain duties and responsibilities exercised by the circuit court clerk be performed by an employee of the county election board (IC 3-6-5-14.5). This resolution may only be adopted with the consent of the circuit court clerk, and automatically expires shortly after the incumbent clerk leaves office.

PRIMARY DUTIES OF THE COUNTY ELECTION BOARD

The primary duty of the county election board is to administer the election process within the county. The members of the county election board supervise and oversee the conduct of the general election year primaries, the general election in November,

city elections and primaries, and in some cases, town elections. The county election board may also be called upon to conduct a special election in accordance with state law.

In conducting an election, the county election board is responsible for preparing and distributing ballots, ballot labels, or ballot pages depending on the type of voting system used by the county. The circuit court clerk may exercise these powers and duties with assistance of the appointed members of the county election board. Some state statutes specifically require the circuit court clerk to perform some election duties, such as affixing the clerk's seal to absentee ballots. In Lake County, the director of the board of elections and registration performs the duties of the circuit court clerk under the election code.

A county election board may also investigate and rule on questions concerning the validity of a declaration of candidacy or concerning reported election law violations. Before the county election board may consider taking action concerning a declaration of candidacy, a voter of the election district must file a sworn statement with the county election board questioning the eligibility of the candidate and setting forth the facts known to the voter (IC 3-8-1-2). The county election board must resolve a question regarding a declaration of candidacy **no later than:**

- (1) fifty-four (54) days before the primary (for primary nomination candidates and school board candidates elected at the same time as the primary (IC 3-8-2-14));
- (2) 60 days before the date on which the general or municipal election will be held for candidates nominated by petition (independent and third party candidate and school board candidates elected at the general election (IC 3-8-6-14));
- (3) noon, October 1 for candidates selected to fill a vacancy (frequently due to no candidate running on the primary ballot (IC 3-13-1-16.5));

- (4) noon, seven (7) days before election day for candidates selected to fill a vacancy occurring less than thirty (30) days before election day (IC 3-13-2-11); and
- (5) noon, seven (7) days before election day for write-in candidates (IC 3-8-2-14).

CANDIDATE FILING ISSUES

One of the most common questions for which county election boards receive concerns whether (or for how long) a candidate has resided in the election district. Until recently, candidates and county election boards had only a few, and sometimes contradictory, state laws to guide them on this issue. A long-time favorite was IC 3-7-1-9, which stated:

“The residence of an unmarried man (changed to ‘person’ in 1987 and subsequently repealed in 1995), is where the man usually sleeps.”

Indiana Code 3-5-2-42.5 now generally defines “residence” as the place where a person has the person’s true, fixed, and permanent home and principal establishment, and to which the person has, whenever absent, the intention of returning. IC 3-5-5-2 provides that a person’s residence may be established by origin or birth OR intent and conduct taken to implement the intent.

Although the former residency rules are still ***presumptions*** that a candidate must overcome to establish a different residence, a county election board will determine the facts of ***each particular situation*** for any candidate residency questions.

Bottom line: The county election board will need to determine the actual facts in each residency issue and decide what, if anything, the candidate did to establish the required residency, if it is called into question. The same process is utilized when a ***voter’s***

residency needs further determination by the county election board.

BALLOT PRINTING/PROOFING

County election board members have other significant duties, including checking and proofing the ballots for each election. While this task, in and of itself, does not often seem very exciting, it is a critical function of conducting an election. While some may consider checking and proofing the ballots a menial or boring task, it becomes essential if ballots contain spelling errors or are erroneously placed in incorrect voting precincts. These errors have been the basis of several recounts and contests in past elections. It is a good idea to have both political party chairs review and proof the election ballots as well. The political party chairs often know the candidates and their districts well, and can “spot” any errors easily.

NOTE: IC 3-5-7 now provides specific requirements for candidates’ names on the ballot. In determining a challenge to a candidate under IC 3-8-1-2, the county election board must consult these statutes to determine if a candidate has met the name requirements. A candidate may file a statement indicating that the candidate’s name has changed at any time between the filing of the declaration of candidacy and the printing of the absentee ballots (IC 3-8-7-25.5). The county election board shall print the candidate’s name on the ballot as set forth in this statement.

For a primary election, the county election board is responsible for preparing and printing all of the election ballots for the county. For the general election only, the Indiana Election Division prepares ***paper*** ballots with the names of the certified candidates for electors for President and Vice-President, United States Senator, statewide offices, state constitutional amendment questions, if applicable, and judicial retention questions for justices of the Supreme Court, Court of Appeals and Tax Court, if applicable (IC 3-11-2-1).

Each individual county election board is responsible for preparing the ballots with the names of candidates for United States Representative (Congress), state legislative offices, local offices including township offices, school board offices and precinct committeemen and delegates to the state conventions. The county election board also prepares ballots containing any applicable local public questions (IC 3-11-2-2).

NOTE: Counties utilizing ballot cards (either punch cards or optically-scanned cards), are responsible for the printing of ALL ballots and election booklets used in ALL elections!

DETERMINING CAMPAIGN FINANCE ISSUES

Another important responsibility of ALL county election boards is the oversight and enforcement of the campaign finance laws with respect to the candidates or organizations required to file statements of organization or campaign finance reports with the county election board.

The county election board must compile and maintain a listing of all campaign finance statements or reports pertaining to each candidate, committee and public question. These statements or reports must be available to the public for inspection and copying no later than the end of the second business day following the day during which the county election board received the statements or reports.

In the past, some counties essentially “threw” any filed statements or reports into a box because there was little interest from the public about these reports. However, the county election board is now responsible for enforcing civil penalties for delinquent or defective reports, requiring the county election board to account for each report filed and to “audit” the report to some degree. All members of the county election board will want to review Indiana Code 3-9, (the Indiana Code article on political campaigns and campaign organizations) to become familiar with the many new and enhanced responsibilities required of the county election boards. Particular attention should be paid to IC 3-9-4-14, which details the specific duties the county election board must perform in enforcing the campaign

finance laws.

The county election board must notify delinquent filers that the reports are due in the office and must post a list of delinquent filers in a public place or near the entrance of the board's office(s).

The county election board **MUST** assess civil penalties against delinquent filers in the amount of fifty dollars (\$50) for each day that the statement or report is late, with the afternoon of the final date for filing the statement or report being calculated as the first day of the penalty (IC 3-9-4-17(c)). The civil penalty cannot exceed one thousand dollars (\$1000) plus any investigative costs incurred by the county election board (such as certified mailing costs).

For a committee or organization filing a **defective** report, the county election board must send a notice stating that the statement or report filed is defective and give the committee or organization five (5) days to correct the deficiencies. The civil penalty is ten dollars (\$10) for each day the report is not corrected after the expiration of the five (5) day period, not to exceed one hundred dollars (\$100) total.

Indiana Code 3-9-4-19 states that:

“ . . . [I]f upon the unanimous vote of its entire membership, . . . a county election board finds that imposition of a civil penalty required to be imposed would be unjust under the circumstances, the . . . board may do either of the following:

- (1) Waive the penalty.**
- (2) Reduce the penalty to an amount specified by the . . . board.”**

Since waiving or reducing a civil penalty requires a unanimous vote of the entire county election board, the board members may need to play a more active role in the collection and auditing of these statements and reports. There will be continued focus upon the receipt of these campaign finance statements and reports as the issue of campaign finance reform is discussed.

In other words, throwing all of the campaign finance reports into a box and forgetting about them is probably out of the question from now on.

ELECTION VIOLATIONS/PROBLEMS

Probably the most challenging and controversial decision that a county election board will make is to determine if there is substantial reason to believe that an election law violation has or will occur. In these cases, the county election board may conduct a hearing to resolve the issues involved in the problem. The county election board has the power to subpoena witnesses and to question those witnesses under oath. If, after affording due notice and an opportunity for a hearing, the county election board believes that an act constitutes or will constitute an election violation, the county election board may take whatever action it deems proper under the circumstances. This includes referring the matter to the attorney general for civil action or the county prosecuting attorney for criminal prosecution.

Prior to conducting any meetings or hearings on an alleged election violation, it is important that the county election board receive a written, signed complaint documenting the issue. There are serious legal risks involved if a county election board acts on gossip or anonymous comments or remarks.

However, there are times (especially on election day), when it would be impossible to collect “evidence” or for someone to send a complaint letter to the county election board for action. At times, the county election board will receive complaints from candidates or voters regarding “electioneering” activities or problems at a voting precinct. In these cases, it is important for the county election board to take immediate corrective action.

An example of this type of corrective action would be if a voting precinct called the county election board to report that volunteers for the candidates were not obeying the law regarding the 50 foot chute leading up to the polling place (IC 3-14-3-4, IC 3-14-3-15 and IC 3-14-3-16). If these volunteers were passing out candidate literature or confronting voters within the 50 foot chute, then they would be in violation of the statute. The county election board would not need to wait until a formal, written complaint was filed with the board to take action. The county election board should immediately send someone (a deputy election commissioner, for example), out to the polling location to ensure that all distribution of campaign literature does not come within the 50 foot chute, as specified by law.

On election day, if a voter completes an affidavit before the precinct inspector that a person who has voted is an illegal voter in the precinct, the inspector shall place any such affidavits into a secure bag or envelope and deliver them with the remainder of the precinct election materials to the county election board. The county election board will carefully preserve these affidavits and deliver them to the foreman of the county grand jury when next in session (IC 3-14-5-1 and IC 3-14-5-2).

Sometimes violations are reported after the election, when immediate corrective action cannot be taken. In these cases, the county election board should meet after receiving a written complaint. The board can obtain evidence in the matter and, if the board determines that a violation did occur, the board can report their findings and recommend corrective action if the violation was inadvertent or not critical to the election process. Serious violations can be reported to the state police or to the county prosecuting attorney, if the county election board finds a violation of a criminal provision.

CANVASSING AND CERTIFYING ELECTION RETURNS

After the election ballots have all been tabulated, the county election board must canvass the official returns and certify the election results. Depending on the type of voting equipment each county utilizes, the canvassing process at the county court house or “election central” will be slightly different.

The county election board may employ clerical assistants if necessary for the proper tabulation and canvassing of the vote (IC 3-12-4-4). The clerical assistants employed for this purpose, however, must be equally divided between the two major political parties of the county. In addition, these clerical assistants must have the same qualifications that any person serving on a precinct election board under IC 3-6-6-7. The county election board may pay a reasonable rate of compensation for the assistant’s services in canvassing.

Indiana Code 3-12-4-5 specifies that the county election board and any assistants hired to help with the county canvassing process meet by 6:00 P.M. on election day in the county court house or “election central” location. The actual canvassing that the county election board conducts must be performed in public pursuant to IC 5-14-1.5. However, the room where the canvassing is conducted may be organized in a way to keep media and other watchers or observers from handling election materials or interfering with the process.

The canvassing procedure requires the county election board to do the following:

1. Carefully examine and compare the certificates, poll lists, and tally sheets; and
2. Aggregate and tabulate from the papers entrusted to it the vote for the county and each political subdivision, as appropriate (IC 3-12-4-8).

The county election board shall tabulate the votes cast for each office to be elected as well as for and against each statewide and local public question on the ballot.

The county election board must have tally papers prepared to use in tabulating the votes at each election. Usually the circuit court clerk prepares these tally sheets.

These tally sheets must contain:

1. The name of each candidate;
2. The offices elected;
3. The total number of votes received by each candidate;
4. The total number of votes cast for and against each public question; and
5. The total number of votes cast in the election.

After the county election board has finished the canvass of the vote, the board must certify the election results in a statement prepared by the circuit court clerk (IC 3-12-4-9). Each member of the board must personally sign this statement.

The circuit court clerk must furnish a copy of this statement to the county chair of each political party no later than noon, Monday, after the certification of the results by the county election board.

The clerk must also furnish a copy of this certification to the Election Division no later than noon Monday after the election (IC 3-12-5-1).

Finally, the county election board will deliver to the circuit court clerk all of the canvass sheets used by the board as well as all certificates, poll lists and tally papers returned by each inspector and judge in the county. The circuit court clerk will preserve all of these materials in the clerk's office for at least 22 months after the election.

There may be times when the tally papers or submissions from a precinct election board may be called into question by the members of the county election board based on how the vote or votes of that precinct were counted. If the members of the county election board cannot agree as to how the vote of a precinct should be counted, the board must do the following:

1. Immediately report the matter in dispute to the judge of the circuit court; and
2. Provide the judge with a *written brief* stating the grounds of the disagreement and all papers concerning the matter (IC 3-12-4-16).

The judge of the circuit court will make a decision on the dispute presented, and will direct the county election board on how to count the vote. The judge's decision is final with respect to the actions of the county election board.

CONCLUSION

The duties of the county election board are many and varied. These are important duties that must not be taken lightly. The county election board makes critical decisions that could impact the voting process. County election board members should take these responsibilities seriously and do their best to uphold the election laws of the state of Indiana.

While each county election board will handle various responsibilities differently, their basic duty to oversee the election process in each county is an integral part of our democracy.